

1 Stephen D. Finestone (Cal. Bar No. 125675)
Jennifer C. Hayes (Cal. Bar No. 197252)
2 Ryan A. Witthans (Cal. Bar No. 301432)
FINESTONE HAYES LLP
3 456 Montgomery Street, Floor 20
San Francisco, CA 94104
4 Tel.: (415) 481-5481
Fax: (415) 398-2820
5 Email: sfinestone@fhllawllp.com
Email: jhayes@fhllawllp.com
6 Email: rwitthans@fhllawllp.com

7 Attorneys for Kyle Everett,
Chapter 7 Trustee
8

9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 In re BENJA INCORPORATED, *aka* EPHE
13 CORPORATION,

14 Debtor.

Case No. 20-30819-DM
Chapter 7
Hon. Dennis Montali

**CHAPTER 7 TRUSTEE'S MOTION
FOR ORDER AUTHORIZING
PAYMENT OF CHAPTER 7
ADMINISTRATIVE EXPENSE
(UNITEDLEX CORPORATION)**

Hearing:

*No hearing requested. Noticed pursuant to
B.L.R. 9014-1(b)(3).¹*

*Please visit www.canb.uscourts.gov for
information regarding the Court's operations
due to the COVID-19 pandemic.*

22
23 Kyle Everett (the "Trustee"), the duly appointed Chapter 7 trustee of the bankruptcy
24 estate of the above-captioned debtor ("Benja"), hereby submits this motion (the "Motion") for an

25
26
27 ¹ Unless specified otherwise, all chapter and code references are to the Bankruptcy Code,
28 11 U.S.C. §§ 101–1532. "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy
Procedure and "B.L.R." references are to the Bankruptcy Local Rules for the Northern District of
California.

1 order authorizing, on a retroactive and ongoing basis, the payment of Chapter 7 administrative
2 expenses to UnitedLex Corporation (“UnitedLex”). This Motion is supported by the concurrently
3 filed declaration of the Trustee and notice. In support of this Motion, the Trustee represents as
4 follows:

5 I. INTRODUCTION AND BACKGROUND

6 1. Benja is a Delaware corporation that filed a voluntary petition for Chapter 11
7 bankruptcy relief on October 15, 2020. ECF 1. The Trustee was appointed as the Chapter 11
8 trustee on November 3, 2020. ECF 45. The case was converted to Chapter 7 on January 29,
9 2020, and the Trustee was appointed as the Chapter 7 trustee. ECF 85, 86.

10 2. The Trustee sought to employ UnitedLex to manage electronically stored
11 information (“ESI”) obtained by the Trustee in his investigation of estate claims, among other
12 things. ECF 109 (the “Application”). These documents have been, and continue to be, essential
13 to the Trustee’s litigation of claims for the benefit of the bankruptcy estate and Benja’s creditors.

14 3. This Court approved the employment of UnitedLex on February 10, 2022. ECF
15 111 (the “Employment Order”). Among other things, the Employment Order authorized the
16 Trustee “to pay compensation to UnitedLex on an interim basis, in the ordinary course of
17 business as set forth in the Application, which payments shall be subject to the Court’s review
18 and final approval.” *Id.*

19 4. The case of *Dreyfuss v. Cory (In re Cloobek)*, 788 F.3d 1243 (9th Cir. 2015) has
20 been interpreted as requiring trustees to seek retroactive approval of all expenses in a bankruptcy
21 case to the extent notice was previously not given.

22 5. B.L.R. 2016-1(a), which was promulgated in response to *Cloobek*, provides:

23 A Chapter 7 trustee may, during the course of a chapter 7 case,
24 without further authorization from the court and subject to final
25 authorization upon consideration of the Trustee’s Final Report,
26 disburse amounts aggregating up to \$25,000 from estate funds to
27 pay actual and necessary expenses of the estate arising in the
28 ordinary course of administering the estate (“Authorized
Disbursal”), including but not limited to such expenses as:

(21) Charges for storage of the debtor’s records to prevent the
destruction of those records and related necessary cartage costs.

1 All disbursements made by the trustee pursuant to this rule must be
2 disclosed in the Trustee's Final Report. Applications for fees or
3 costs filed by the trustee and by paraprofessionals employed in the
case by the trustee must disclose disbursements made pursuant to
this rule for which reimbursement from the estate is requested.

4 6. As of the date of this Motion, the Trustee has made payments to UnitedLex
5 totaling \$44,085.79. A breakdown of the charges is provided in the Trustee's accompanying
6 declaration. These payments were for actual and necessary expenses of the estate arising in the
7 ordinary course of preserving the estate's records, and they were paid pursuant to this Court's
8 Employment Order.

9 7. The Trustee anticipates, based on the needs of the case, that the services of
10 UnitedLex will continue to be required in the ordinary course of preserving the estate's records.
11 The Trustee further anticipates that, to provide these services, UnitedLex will require payment
12 on an ongoing basis as set forth in the Employment Order.

13 **II. REQUEST FOR RELIEF**

14 For the reasons stated above, and pursuant to *Cloobek* and B.L.R. 2016-1(a), the Trustee
15 requests that the Court enter an order providing:

- 16 1. The \$25,000 cap provided by B.L.R. 2016-1(a) is lifted on a retroactive and ongoing
17 basis as it relates to payments made by the Trustee to UnitedLex.
 - 18 2. The Trustee is authorized, but not directed, to continue making ongoing payments to
19 UnitedLex on an interim basis for actual and necessary expenses of the estate arising
20 in the ordinary course of business as set forth in the Application and Employment
21 Order.
 - 22 3. All payments made by the Trustee to UnitedLex shall be subject to the Court's review
23 and final approval as set forth in the Employment Order.
 - 24 4. All disbursements made by the Trustee to UnitedLex shall be disclosed in the
25 Trustee's Final Report as set forth in B.L.R. 2016-1(a).
- 26
27
28

1 Dated July 5, 2023

FINESTONE HAYES LLP

2
3 /s/ Rvan A. Witthans

4 Ryan A. Witthans
5 Attorneys for Kyle Everett,
6 Chapter 7 Trustee
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28